

FORM SEC-208 (11-69)

TRANSMITTAL 57

United States of America
DEPARTMENT OF COMMERCEDEPARTMENT
ADMINISTRATIVE ORDER 202-735-A**DEPARTMENT
ADMINISTRATIVE
ORDER SERIES**

DATE OF ISSUANCE

November 5, 1969

EFFECTIVE DATE

November 5, 1969

SUBJECT

EMPLOYEE RESPONSIBILITIES AND CONDUCT

- Section 1. Purpose
- Section 2. *Outside Employment*
- Section 3. Employee Inventions
- Section 4. Indebtedness to the United States Government
- Section 5. Indebtedness to a State or Local Government or to a Credit Union
- Section 6. Private Indebtedness
- Section 7. Effect on Other Orders

SECTION 1. PURPOSE.

.01 The purpose of this order is to prescribe instructions to supplement Departmental regulations on employee responsibilities and conduct approved by the Civil Service Commission, as set forth in Department Administrative Order 202-735 (formerly Department Order 77, 15 CFR 0.735-1 - 0.735-41). These supplementary instructions are issued in accordance with 5 U.S.C. 301 and paragraph 0.735-32 of Department Administrative Order 202-735.

.02 The instructions in this order relate to (a) certain outside employment or other activity, (b) employee inventions, and (c) indebtedness of employees.

.03 The instructions relating to outside employment or activity are *revised to clarify the basis for the requirement for determinations of compatibility with respect to outside employment.* The instructions relating to employee inventions are a restatement of existing regulations without substantial change. The instructions relating to indebtedness of employees are a restatement of existing regulations without substantial change except as necessary in section 6 to bring them into alignment with paragraph 0.735-16 of Department Administrative Order 202-735.

SECTION 2. *OUTSIDE EMPLOYMENT.**.01 General Policy.**

a. Department Administrative Order 202-735 prohibits outside employment by Department employees which is not compatible with the full and proper discharge of the duties and responsibilities of their Government employment. Two of the principles implicit in that general policy are that (1) outside work engaged in by employees must not involve a conflict of interest, and (2) it must not interfere with or be detrimental to the efficient discharge of the official duties of employees during the hours they are expected to be available to perform the work of the Department.

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b. A question of compatibility arises where an employee's outside work is of such a nature that it involves, tends to involve, or appears to involve, (1) a conflict of interest (regardless of when the work activity takes place), or (2) a holding out by the employee of his availability for outside work or communication about it without an indication that he is not available during his hours of duty, or (3) any of the following matters during hours of duty (including overtime hours) for which the employee is expected to be available: (a) communication with other parties or their access to the employee with respect to the outside work; (b) his engaging in outside work or activity connected with it; (c) impairment of his mental or physical capacity to discharge his Governmental duties and responsibilities in an acceptable manner; or (d) other activity which may create a problem of supervision or management in connection with the discharge of his official duties (e.g., need for absences from duty, inattention to duty, preoccupation with outside employment, and the like).

c. Where a question of compatibility with his official duties may be created by an employee's outside employment, the employee shall consult the counselor or a deputy counselor designated under paragraph 0.735-38 of Department Administrative Order 202-735 (see paragraph .03 of this section), prior to undertaking or continuing such outside employment, and obtain a decision with respect to the compatibility of the outside employment with the employee's official duties.

.02 Special Policy: Private Practice of Law.

a. Except as is otherwise provided in subparagraphs b. and c. of this paragraph .02, the private practice of law generally is of such nature that, when engaged in by a full-time employee of the Department, it gives rise to a question of compatibility with the discharge of his official duties, which must be resolved. A decision on compatibility shall be obtained as specified in paragraph .03 of this section.

b. It is the policy of the Department to encourage employees qualified to practice law to participate, in off-duty hours and to the extent consistent with the discharge of their official duties, without compensation for their services in a program to provide legal assistance or representation to poor persons. Such participation shall not include representation or assistance in any criminal or other matter or proceeding in which the United States (including the District of Columbia Government) is a party or has a direct interest. An employee who intends to participate in such a program is not required to obtain a decision on compatibility but shall give written notice to the counselor or deputy counselor concerned (see paragraph .03 of this section) of his intention.

c. When the private practice of law (1) cannot possibly involve any of the considerations described in subparagraph .01b. of this section, (2) is limited to occasional handling of legal matters which do not involve the interests of the Government (e.g., wills and private real estate transactions), and (3) is limited to clients whose interests cannot be affected directly or indirectly by the employee's performance of his official duties, the private practice of law will not be deemed to give rise to a question of compatibility, and no decision with respect to compatibility need be requested.

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d. Each supervisor is responsible for overseeing employee activity in order to assure that the public interest is protected, and he shall take appropriate action whenever it appears to him that there is or may be a question of compatibility between the official duties and the outside employment of one of his subordinates.

.03 Procedure.

a. Private practice of law. Except as provided in subparagraphs .02b. and .02c. of this section, full-time employees, whether occupying legal positions or not, who desire to engage in the private practice of law shall submit in writing a request for a decision. Each request shall include (1) a brief description of his official title and nature of work; (2) whether he holds himself out to the public as a practitioner of law by maintaining a publicly listed place of business, or a mail or answering service for such purpose, or by affiliating himself with others engaged in private practice of law; (3) whether he has regular part-time employment as an attorney for any business or other organization; and (4) a description of the nature and extent of the private practice or legal work to be performed. The request shall be addressed to the General Counsel of the Department, who serves as counselor for the Department with respect to matters covered by Department Administrative Order 202-735, or to an appropriate deputy counselor designated by the General Counsel. The following have been designated as deputy counselors for this purpose by the General Counsel:

Deputy General Counsel of the Department
 Assistant General Counsels of the Department
 General Counsel, National Oceanic and Atmospheric Administration
 Solicitor, Patent Office
 General Counsel, Maritime Administration
 Chief Counsel, Economic Development Administration
 Chief Counsel, Office of Foreign Direct Investments

The counselor or a deputy counselor will promptly issue a written decision to the applicant. In the event of an adverse decision, the decision will explain, insofar as practicable, why the proposed private practice or legal work is deemed incompatible with the employee's official duties and what, if anything, may be done by the employee to bring the proposal within the bounds of compatibility. Each deputy counselor issuing such a decision shall transmit a copy thereof, with a copy of the employee's request, to the counselor. A copy of the decision shall be filed in the employee's official personnel folder.

b. Other outside employment. For any outside employment other than the private practice of law which gives rise to a question of compatibility as described in subparagraph .01b. of this section, each employee shall submit a request in writing for a decision to the head of the operating unit concerned or his designated representative. The request shall contain a brief description of the employee's official duties and sufficient details of the nature and extent of his outside employment for an informed decision to be made. The head of such operating unit may consult with the counselor or a deputy counselor and shall promptly issue a written decision to the applicant. A copy of the decision shall be filed in the employee's official personnel folder.*

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c. An employee who intends to participate in a program such as is described in paragraph .03 of this section shall give written notice of such intention to the General Counsel or his designee, or to the head of his operating unit, as appropriate in connection with an application for authorization (see subparagraphs .04a. and .04b. of this section). In each instance a copy of such notice shall be transmitted to the General Counsel.

SECTION 3. EMPLOYEE INVENTIONS.

.01 Purpose. The purpose of this section is to prescribe the regulations of the Department of Commerce with respect to patent rights in and to inventions made by employees of the Department.

.02 Legal Background and Authority.

a. Executive Order 10096, as amended.

1. Executive Order 10096 of January 23, 1950 (15 F.R. 391), established uniform patent policy with respect to inventions made by employees of the Federal Government under which the Government may acquire title to inventions made by its employees under certain conditions, while providing for the partial or complete retention of rights by employees under other conditions. This order, which established a Government Patents Board, authorized its Chairman to issue, with the approval of the President, such rules and regulations as are necessary to the administration of uniform patent policy with respect to inventions made by employees throughout the Government.

2. The President, by Executive Order 10930, dated March 24, 1961 (26 F.R. 2583, March 28, 1961), abolished the Government Patents Board, including the Office of the Chairman, and transferred its functions to the Secretary of Commerce. The authority to perform such functions was delegated on the same date, March 24, 1961, by the Acting Secretary of Commerce, to the Commissioner of Patents (26 F.R. 3118, April 12, 1961).

3. Executive Order 10096, as amended, provides that each Government department and independent establishment is directed to take all steps necessary to effectuate the Executive Order, including the issuance of necessary regulations consistent with provisions of the Executive Order and the rules and regulations issued thereunder by the Commissioner.

b. Rules and regulations. Basic Government patent policy with respect to inventions made by Government employees is administratively restated in Part 300, Chapter III, Title 37, Code of Federal Regulations, 37 C.F.R. 300.1-300.11; (27 F. R. 3289, April 6, 1962), but therein are set forth, as approved by the President, February 6, 1962, the responsibilities of Government agencies and procedures to be followed. These responsibilities include (1) the determination of invention, (2) the determination of rights in inventions, (3) administrative appellate rights of employee-inventors, (4) the determination as to whether patent protection will be sought, and (5) the furnishing of certain reports to the Commissioner of Patents.

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.03 Policy of the Department. It is the policy of the Department of Commerce to encourage invention by its employees and to take full cognizance of the rights and interests of its employee-inventors, within the limitation of its authority, in making determinations of the respective rights and equities of the Government and of the inventor in an invention made by an employee of the Department of Commerce.

.04 Definitions. For purposes of this section, the following definitions shall apply:

a. "Government employee" or "employee" is any officer or employee of the Department, including any part-time consultant or part-time employee except as otherwise may be provided by contract, regulation, or practice approved by the Commissioner of Patents; and

b. "Invention" means any art, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States.

.05 Assignment of Responsibilities.

a. In discharging its responsibilities in connection with the uniform patent policy, the Department of Commerce is charged with:

1. Determining whether the results of research, development or other activity within the Department constitute invention within the purview of Executive Order 10096, as amended by Executive Order 10930, of March 24, 1961;
 2. Determining, subject to review by the Commissioner of Patents, the respective rights of the Government and of the inventor in and to any invention made by an employee of the Department of Commerce;
 3. Determining, subject to certain exceptions hereafter noted, whether patent protection will be sought by the Department of Commerce for such inventions; and
 4. Furnishing reports as required to the Commissioner of Patents with respect to the determination of rights, the taking of appeals, the filing of applications, and the issuance of patents.
- b. The General Counsel will carry out these responsibilities for the Department and will also serve as the Department's liaison officer to deal with the Commissioner of Patents on these and other matters pertaining to employee inventions. In the discharge of his responsibilities as enumerated in subparagraph .05a. of this section exclusive of subparagraph .05a.4., the General Counsel may utilize such representatives, boards, and committees as he deems appropriate, or may delegate his authority in such manner as he deems desirable.

.06 Determination of Invention.

a. Every employee of the Department who believes he has made an invention shall promptly furnish a full description thereof in writing to the head of his operating unit, or to his designee for this purpose.

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- b. The head of each operating unit or his designee shall submit to the General Counsel all descriptions of inventions furnished by employees.
- c. The General Counsel shall maintain a docket of all employee inventions and take steps to obtain appropriate information on Forms CD-240, "Invention Disclosure," and CD-241, "Invention Evaluation," on these inventions.

.07 Determination of Rights.

a. Conditions for assignment. The Department of Commerce may require assignment to the Government of the entire right, title, and interest in and to inventions made by its employees and to any patents that may be issued on such inventions if it is established that any of the following conditions are present and are sufficiently equitable to justify requirement of assignment:

1. If the invention was made during working hours;
2. If the invention was made with a contribution by the Government of facilities, equipment, materials, funds, or information, or of time or services of other Government employees on official duty; or
3. If the invention bears a direct relation to or was made in consequence of the official duties of the inventor.

b. Definitions of conditions. In determining whether any of the conditions set forth above were present in the making of the invention, the following definitions shall apply:

1. Work hours shall mean time spent during either the usual working hours, or overtime, or both;
2. A contribution of facilities, equipment, materials, or funds shall mean that Government facilities, equipment, materials, or funds were actually used in connection with the invention;
3. A contribution of information shall mean that the information used in making the invention was available only by reason of the inventor's official duties and was obtained from sources not otherwise available;
4. A contribution of time and services of other Government employees on official duty shall mean that their time or services were utilized during work hours as defined above; and
5. Bearing a direct relation to or made in consequence of the official duties of the inventor means that the duties to which the inventor had been assigned were such that the invention could reasonably be expected to arise therefrom.

c. When assignment is required. When any of the conditions set forth in subparagraph .07a. of this section as defined in subparagraph .07b. of this

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section exist, the domestic rights and, in the discretion of the General Counsel, foreign rights in and to the invention shall belong to the Government if:

- (1) The conditions are equitably sufficient to justify assignment thereof by the employee to the Government; and
- (2) The Government has sufficient interest in the invention to require assignment thereof by the employee.

Where the Government would otherwise be entitled to an assignment, if it should be found that such assignment should not be required because of lack of sufficient interest in the invention on the part of the Government, the employee nevertheless shall be required to grant to the Government a non-exclusive, irrevocable, royalty-free license in the invention and under any patents which may issue thereon, with power to grant licenses for all governmental purposes.

d. Entire title to invention left to employee. When none of the conditions set forth in subparagraph .07a. of this section exist, the entire right, title, and interest in and to the invention shall be left in the employee, subject to law.

e. When conditions for assignment are presumed to exist. It shall be presumed that the conditions of subparagraph .07a. of this section exist when the employee is employed or assigned:

- (1) To invent or improve or perfect any process, machine, manufacture, design, or composition of matter;
- (2) To conduct or perform research or development work, or both;
- (3) To supervise, direct, coordinate or review Government-financed or conducted research or development work, or both; or
- (4) To act in a liaison capacity among governmental or non-governmental agencies or individuals engaged in such research or development work, or both.

This presumption may be rebutted by the facts or circumstances attendant upon the conditions under which any particular invention is made and shall not preclude a determination (1) that the Government shall leave the entire right, title and interest in and to the invention in the employee, subject to law, or (2) that title shall be left in the employee subject to a license to the Government as set forth in subparagraph .07c. of this section.

f. Burden of proof. Employees assigned for any one or more of the purposes enumerated in subparagraph .07e. of this section may submit evidence that will enable the General Counsel to establish the absence of any one or more of the conditions of subparagraph .07a. of this section, or that the conditions which exist are insufficient equitably to justify a requirement that assignment be made to the Government of the invention and any patent which may issue thereon.

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For all other employees, the Government must establish that the conditions of subparagraph .07a., if present, are sufficient equitably to require an assignment to the Government of the invention and to any patent which may issue thereon.

g. Foreign rights. An assignment of the foreign rights in and to the invention shall be made by the employee, upon request, whenever an assignment of the domestic rights is required.

.08 Appeals and Petitions.

a. Appeals. Any employee who is aggrieved by a determination of the General Counsel as to his rights to or in an invention he has made may obtain a review of the determination by filing two copies of a written appeal with the Commissioner of Patents within 30 days after receiving notice of the determination (or such longer period as the Commissioner may, for good cause, fix in any case). The decision of the Commissioner of Patents upon any appeal made to him shall be final, after the period for asking reconsideration expires. Any request by the inventor for reconsideration must be filed with the Commissioner within 30 days from the date of the original decision of the Commissioner (or within such an extension thereof as may be set by the Commissioner before the original period expires).

b. Agency report on appeal. In the event any employee files an appeal, the General Counsel shall furnish the Commissioner of Patents, with a copy to the employee, the following information:

1. Description of the invention in sufficient detail to permit a satisfactory review;
2. Name of the inventor and his employment status, including a detailed statement of his official duties and responsibilities at the time of making the invention;
3. A statement of the agency determination and reasons therefor; and
4. A detailed statement of the points of dispute or controversy, together with copies of any statement or written arguments filed with the agency, and of any other relevant evidence that the agency considered in making its determination of Government interest. Within 25 days (or such longer period as the Commissioner may, for good cause shown, fix in any case) after the transmission of a copy of the agency report to the employee, the employee may file a reply thereto with the Commissioner and file one copy thereof with the agency. After the time for the inventor's reply to the Government agency's report has expired and if the inventor has so requested in his appeal, a date will be set for the hearing of oral arguments by the employee (or by an attorney whom he designates by written power of attorney filed before, or at the hearing) and a representative of the Government agency involved. The hearing will be conducted by the Commissioner, an Assistant Commissioner, or a hearing officer designated by the Commissioner. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to thirty minutes for each side. The employee need not retain an attorney or request an oral hearing to secure full consideration of the

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facts and his arguments. He may expedite such consideration by notifying the Commissioner when he does not intend to file a reply to the agency report. After a hearing on the appeal, if a hearing was requested, or after expiration of the period for the inventor's reply to the agency report if no hearing is set, the Commissioner shall issue a decision on the matter, which decision shall be final after the period for asking reconsideration expires or on the date that a decision on a petition for reconsideration is finally disposed of. Any request for reconsideration or modification of the decision must be filed within 30 days from the date of the original decision (or within such an extension thereof as may be set by the Commissioner before the original period expires). The Commissioner's decision shall be made after consideration of the statements of fact in the employee's appeal, the agency's report, and the employee's reply, but the Commissioner, at his discretion and with due respect to the rights and convenience of the inventor and the Government agency, may call for further statements on specific questions of fact or may request additional evidence in the form of affidavits or depositions on specific facts in dispute.

c. Petitions not involving appeals. In the event it is determined that the rights in and to an invention are to be left with the employee, a report of such determination is required to be submitted to the Commissioner of Patents for review. The Commissioner will review the determination and his decision respecting the matter shall be final, subject to the right of the employee to submit to the Commissioner within 30 days (or such longer period as the Commissioner may, for good cause, fix in any case) after receiving notice of the decision, a petition for reconsideration if the Commissioner's decision gives the Government greater rights than the original determination. Copies of such petitions will be filed with the head of the operating unit and the General Counsel.

.09 Patent Protection.

a. General. The General Counsel, upon determining that an invention has been made under the conditions specified in subparagraph .07a. of this section, shall determine whether patent protection will be sought in the United States by the Department of Commerce for such invention. A controversy over the respective rights of the Government and of the inventor in any case shall not delay the taking of any action seeking such patent protection. In cases where it is determined that the domestic rights in and to the invention are to be left with the employee, action by the Department of Commerce looking toward such patent protection shall be contingent upon the consent of the inventor.

b. Dispute as to rights. Where there is a dispute as to whether the Government is to obtain an assignment of the domestic rights in and to the invention or only a license thereunder, the General Counsel will determine whether patent protection will be sought in the United States pending the Commissioner's decision on the dispute. If the General Counsel decides that an application for patent should be filed, he will obtain for the Government a non-exclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, but this shall be without prejudice to acquiring an assignment to the Government of the entire domestic right, title, and interest in and to the invention should the Commissioner so decide.

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c. Rights in the employee. Where the General Counsel has determined to leave the domestic rights in and to an invention with an employee subject to a license in favor of the Government and the employee acquiesces in this determination, the General Counsel will, upon the filing of an application for patent and pending review of the determination by the Commissioner, obtain for the Government a non-exclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all governmental purposes, without prejudice to the subsequent acquisition by the Government of the entire domestic rights, title, and interest in and to, the invention should the Commissioner so decide.

.10 Scope of Section. The provisions of this section apply to any invention made by an employee on or after January 23, 1950.

SECTION 4. INDEBTEDNESS TO THE UNITED STATES GOVERNMENT.

.01 Purpose. The purpose of this section is to prescribe Departmental policy and procedure relating to indebtedness of an employee to the United States Government other than an indebtedness arising out of an erroneous payment of pay collection of which is waived under 5 U.S.C. 5584 (see Administrative Order 202-558).

.02 Legal Basis. Section 6331 of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat.783; 26 U.S.C. 6331), authorizes involuntary deductions from the salary of a Government officer or employee who is delinquent in paying his Federal income tax. 5 U.S.C. 5514 authorizes involuntary deductions from any employee's salary for indebtedness to the Government resulting from overpayment by the agency concerned. In addition, where the Government is both debtor and creditor with respect to an employee, the Government has a right to set off the indebtedness to the Government against the indebtedness of the Government to the employee in settling accounts. (See R. S. 236; Act of June 10, 1921, 42 Stat. 24; 31 U.S.C. 71, and 33 Comp. Gen. 443.)

.03 Policy. Timely payment of any indebtedness to the Government of the United States is an important personal responsibility of each employee concerned. Any employee who fails to liquidate such indebtedness promptly when due is a source of embarrassment to the Department and will be subject to seizure of salary and to appropriate disciplinary action, which may include removal.

.04 Procedure.

a. Responsibility. By virtue of the Department Organization Order 20-8, the authority for administering these regulations is vested in the Director of Personnel. Such authority is redelegated by Administrative Order 202-250 to appointing officers who may be assisted or represented by such responsible officials as they may deem appropriate. The person exercising such authority shall be designated as Department representative.

b. Initial contact with employee. Where a complaint is received concerning, or an error is found creating, an indebtedness to the United States, such information will be referred to the Department representative. The Department representative will confer with the employee concerned and advise him of the Department's policy regarding the liquidation of indebtedness.

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The conference will, on the basis of the facts available:

1. Ascertain that the debt is a just debt; and if so,
2. Endeavor to obtain an agreement for liquidating the indebtedness, subject to the proviso in subparagraph .04b.3. of this section.
3. The Internal Revenue Service is authorized, but not required, to utilize this procedure in collecting delinquent Federal taxes. In lieu of the procedure described in this paragraph .04, the Internal Revenue Service may, if it so desires, utilize the procedure described in the following provision of law (68A Stat. 783; 26 U.S.C. 6331 (a)):

"If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under Section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in Section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section."

In the event the Internal Revenue Service insists upon collection by levy, rather than collection by payroll deduction plan, the procedure for collection by levy must be observed, and the remainder of this paragraph .04 is not applicable.

c. Voluntary liquidation of a just debt. When it is established that the debt is a just debt, that the employee is willing to enter into a plan for liquidating the indebtedness, and that collection by levy procedures is not involved, the Department representative will assist him in formulating such a plan substantially as follows:

1. The employee will agree to (a) a cash settlement in full or cash payment by installments, or (b) payroll deductions to cover the amount due.
2. The payment should be as large as the employee's personal financial situation will permit. Except in extreme circumstances, the payment should be large enough to liquidate the indebtedness in full (including any interest due) in not more than one year. Installments in no case should be less than five dollars for each agreed upon installment period. The amount deducted must remain constant except for the final deduction, which may cover the balance due in an amount less than a regular deduction.

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3. When an employee agrees to the plan of deducting a certain amount from his salary, he should execute a written agreement, Exhibit 1, "Agreement for Liquidation of Indebtedness to the United States through Cash Payment or Payroll Deduction," or Exhibit 2, Form 2159, "Agreement for Liquidation of Federal Tax through Payroll Deduction" whichever is applicable, which will state the amount of the indebtedness and the amount of cash payments or payroll deductions to be made for this purpose. The agreement must be signed in quadruplicate by the employee and a representative of the Internal Revenue Service or other Government agency to whom the debt is owed. Agreements other than with the Internal Revenue Service will also be signed by the Department representative. The original copy will be sent to the payroll office and one copy retained by each party signing the agreement and the Department representative. (Normally the agreement will be worked out in a conference with the above-named individuals. When such a conference cannot be arranged, however, the document, signed by the employee and the Department representative where appropriate, may be forwarded to the Internal Revenue Service representative or other agency representative concerned for signature, retention of one copy, and return of the other three copies.)
4. An employee may pay more than the amount specified in the agreement in order to liquidate the amount at an earlier date; but in such case, the excess payments must be made directly to the Internal Revenue Service collection office (or other agency collection office) concerned, rather than to the payroll office, and the employee shall notify the Department representative concerned of the amount paid. The Department representative shall advise the payroll office of the amount paid, and request appropriate change in the deduction schedule.
5. The properly completed agreement will be processed to effect the earliest possible action of collecting the full debt or of stated installments effective with the current pay period, if received in time, but not later than the pay period following the one during which the agreement form is received in the payroll office.
6. Certain types of indebtedness, such as delinquent income tax, accrue interest until collected. For this reason, the agreement provides for payment of interest until the date of final payment of the indebtedness. The amount of interest to be paid can be ascertained from the Internal Revenue Service representative or other agency representative concerned when the employee agrees to authorize deductions.
7. Revocation of an agreement authorizing payroll deductions may be made by an employee in writing, addressed to the Department representative, with a copy to the Internal Revenue Service representative (or other agency representative) concerned, and a copy to the payroll officer concerned. Unless an acceptable alternative plan for liquidating the balance due is submitted by the employee and approved by the Department representative concerned prior to the effective date of the notice of revocation, however, the act of revocation will be regarded as willful failure to liquidate the balance due, and action shall be taken promptly:
 - (a) To take involuntary deductions from the employee's salary to the extent permitted by law (see subparagraph.04f. of this section); and

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- (b) To remove the employee or to take other appropriate disciplinary action against him, for indebtedness which embarrasses the Department.

d. Administrative liquidation of a just debt. If the employee does not cooperate in planning the liquidation of the determined just debt, the Department representative shall notify the employee of the complaint or finding in writing; require the employee to submit within a reasonable time a written statement, showing specifically and in detail in what respects and to what extent the alleged debt is not a just debt; and shall, after careful investigation and consideration of all relevant information available, notify the employee of his finding and decision to liquidate the amount of determined indebtedness under provisions authorized by law. Such notice shall inform the employee of his right to redress through a claim against the Government for refund of the amounts deducted, if he believes that the determination is incorrect.

e. Action after determination of the amount of indebtedness. After the Department representative's determination is made and communicated to the employee, the latter shall again be afforded the opportunity to either pay up the indebtedness within seven days or to execute within seven days an administratively acceptable agreement for voluntary payroll deductions as provided in subparagraph .04c. of this section. If the employee fails either to liquidate the indebtedness or to enter a satisfactory agreement for liquidation within the stated seven days, action shall be taken:

1. To take involuntary deductions from the employee's salary to the maximum extent authorized by law; and
2. To remove the employee.

f. Authorization by law to seize salaries. The employee should be advised that:

1. All of his current salary is subject to seizure for delinquent Federal taxes (68A Stat. 783; 26 U.S.C. 6331(a));
2. Up to two-thirds of his current salary in any pay period is subject to seizure to liquidate indebtedness resulting from any erroneous overpayment by this Department. More than this amount may be seized if necessary in order to liquidate the indebtedness within the period of his anticipated employment (5 U.S.C. 5514);
3. In the event of his separation before indebtedness to the United States is liquidated, the following items, to the extent necessary, and without further notice, will be subject to set-off under the law:

- (a) Final salary payment
- (b) Any travel reimbursement
- (c) Any lump-sum payment for annual leave
- (d) Any credit balance due from a savings bond account

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Should these amounts prove insufficient for liquidation of the indebtedness, any balance of the debt will be certified as a claim against retirement account balances; and

4. Pending liquidation of the indebtedness, annual leave may be authorized and used only to the extent such use will not reduce the amount of the lump-sum payment for annual leave below that which will offset the unpaid balance of the indebtedness (including interest, if any).

g. Notice to other offices concerned. Upon receipt of information that an employee is indebted to the United States, the Department representative concerned shall notify:

1. The payroll office concerned, in order that it may safeguard the interests of the United States;

2. The employee's supervisor, in order to prevent approval of annual leave for the employee except after prior consultation, in order to forestall any further evasion by the employee of his obligation to the Government; and

3. The Internal Revenue Service officer concerned, if the employee fails to cooperate in clearing up any delinquent Federal income tax upon receipt of an informal complaint relating thereto, in order that a formal notice of levy can be expedited as a basis for seizing the employee's salary.

h. Fiscal procedure.

1. The payroll unit shall appropriately adjust the payroll records to reflect the agreed upon deduction and record the amount of each payroll deduction on the earnings record card until the indebtedness is liquidated.

2. Each pay period one check in the total amount of all payroll deductions for overdue Federal income tax, payable to the District Director of Internal Revenue, shall be mailed to each Internal Revenue Service collection office concerned, together with a schedule showing the amount to be credited to each employee's indebtedness. A similar procedure will be followed in connection with debts owed to other Government agencies. (A sample schedule is attached as Exhibit 3.)

1. Exceptions. The head of each operating unit, or his authorized representative, is authorized, to the extent permitted by law, to modify or grant an exception to one or more of the foregoing provisions in individual cases of an exceptionally meritorious nature, when necessary to promote the efficiency of the service, provided that no exception may be granted which would have the effect of nullifying the policy of the Department that every practicable step must be taken to liquidate the delinquency within one year.

SECTION 5. INDEBTEDNESS TO A STATE OR LOCAL GOVERNMENT OR TO A CREDIT UNION.

.01 Policy. Timely payment of any indebtedness to a State or local government is an important personal responsibility of each employee because

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5.02

of the civic obligation involved. Timely payment of any indebtedness to a credit union is likewise an important personal responsibility of each employee because of the special trust and mutual interdependence existing among members of a credit union, and the non-commercial nature of the lending activity. Accordingly, the Department of Commerce will give special attention to and cooperation in resolving satisfactorily any problems of indebtedness by an employee to a State or local government or to a credit union.

.02 Procedure. Complaints concerning indebtedness to a State or local government or to a credit union shall ordinarily be handled in the same manner as complaints concerning private debts (see section 6 of this order), except that:

- a. The employee shall be interviewed personally, in addition to being given a memorandum;
- b. Positive follow-up action shall be taken to ensure that the indebtedness is in fact cleared up promptly; and
- c. Correspondence with the complainant shall be personalized and appropriate to the facts in individual cases.

.03 Penalty. Failure on the part of the employee concerned to pay his just debt to a State or local government or to a credit union promptly, after his attention has been called to the matter in accordance with sections 5 and 6 of this order, shall be cause for dismissal or other appropriate disciplinary action.

SECTION 6. PRIVATE INDEBTEDNESS.

.01 Policy.

a. Paragraph 0.735-16 of Administrative Order 202-735 (15 CFR 0.735-16) provides in part as follows:

"(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section, 'a just financial obligation,' means one acknowledged by the employee or reduced to judgment by a court, and 'in a proper and timely manner' means in a manner which, in view of the Department, does not, under the circumstances, reflect adversely on the Government as his employer."

b. In determining whether an employee has failed to pay a just financial obligation in a proper and timely manner, appointing officers shall give consideration to the following factors, among others, as appropriate:

- 1. Whether the employee has willfully or negligently and without acceptable excuse or justification failed to pay the obligation (or any part thereof) promptly and in full, when due.

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6.01c.

2. Whether the entire pattern of actions and statements by the employee in relation to his failure to pay the financial obligation (or any part thereof) promptly and in full, when due, reflects honesty, good faith and the maximum effort which could reasonably be expected of him to pay the obligation in full as due.
 3. Whether the creditor exercised reasonable and prudent care, in the light of all relevant circumstances, before extending credit to the employee. Relevant circumstances may include, but not be limited to, the apparent financial capacity of the employee to pay the obligation in accordance with the terms extended, the employment status and tenure of the employee, the employee's previous credit record, the requirement of security for the loan or other credit extended, whether the creditor made a legal and fair disclosure to the employee of credit terms, whether the sale involved sharp practices by the creditor, and similar circumstances.
 4. Whether the creditor has proceeded to try to collect the amount owed (a) with due diligence; (b) without disturbing the employee or other officials or employees at the Department, by telephone and (c) without causing undue hardship, unwarranted invasion of privacy, or undue loss of personal dignity to the employee.
 - c. An employee who fails to pay each just financial obligation in a proper and timely manner shall be subject to disciplinary action, including suspension or removal.
 - d. In no circumstances shall the Department be placed in the position of determining the validity or amount of a disputed debt.
 - e. Creditors and collectors shall not be permitted to have access to employees on premises occupied by the Department, by telephone or otherwise, for the purpose of presenting, discussing or collecting claims during working hours. When circumstances justify, they shall be advised that the employee will be informed of the call and requested to communicate with them outside official hours of duty, as appropriate. If, nevertheless, the employee is contacted during working hours, he shall advise the creditor or collector that by Department regulation he is not permitted to take care of his private affairs during official hours of duty and that any contacts must be made with him after working hours and away from the Department premises.
- .02 Procedure. The following procedure should be observed in connection with private debt complaints, unless the circumstances in individual cases justify otherwise.
- a. Upon receipt of a private debt complaint against an employee which does not appear to be of a serious nature, his personnel file should be examined to determine whether any previous debt complaints have been received. If not, and there are no other indications that the matter is especially serious, a letter of acknowledgment should be sent to the complainant. A copy of the acknowledgment letter should be sent to the employee and a copy placed in his personnel file. The suggested form and content of the

6.02b.

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letter is indicated in Exhibit 4.

b. Upon receipt of a private debt complaint of a serious nature against an employee or concerning whom a previous complaint has been filed --

1. The letter should be sent to the employee involved, notifying him of the complaint and requesting a statement from him on the matter (see Exhibit 5); or


2. When the cognizant personnel or other administrative officer feels the matter can be handled more effectively by discussion, he should interview, or arrange for the immediate supervisor to interview, the employee concerning the debt complaint. In this case he will prepare a memorandum account of the discussion for filing as indicated in subparagraph .02a of this section; and

3. An appropriate acknowledgment should be sent to the complainant. The suggested form and content of this acknowledgment are indicated in Exhibit 6.

c. It is recognized that a very few business firms follow loose and irresponsible credit practices and attempt to make the Department a collection agency for credit imprudently granted, relying on the Department's insistence that its employees pay each just financial obligation in a proper and timely manner. When circumstances justify, therefore, a letter of inquiry to the complainant may be utilized as a preliminary to the procedures outlined in this section. A sample letter of this nature is included as Exhibit 7.

SECTION 7. EFFECT ON OTHER ORDERS.

This order supersedes Administrative Order 202-735(T), "Regulations Concerning Employee Inventions", dated July 26, 1962, as amended, and Administrative Order 202-735-A (formerly 202-8 and 202-735-A), "Debt Complaints Against Employees," dated November 4, 1958.


Assistant Secretary for Administration

(b)(6)

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EXHIBIT 1
November 5, 1969

AO 202-735-A

AGREEMENT FOR LIQUIDATION OF INDEBTEDNESS
TO THE UNITED STATES
THROUGH CASH PAYMENT OR PAYROLL
DEDUCTION

U. S. Department of Commerce

(Date)

Operating Unit

Name of Employee

Social Security Number

Payroll Office

Home Address

For the purpose of paying my indebtedness to the United States, I hereby agree to:

☐ Pay in cash installments of \$_____, beginning _____
and every _____ thereafter.

☐ Authorize deductions of \$_____ from each salary check due me until
the total of the indebtedness, \$_____, including interest, has been
paid in full.

Check to be made payable to:

Signature of Employee

Check to be mailed to:

Collection Office

Department Representative

Agency

Title

Address

Representative of Agency to
which Debt is Owed.

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EXHIBIT 2

November 5, 1969

**IRS FORM 2159, AGREEMENT FOR LIQUIDATION OF
FEDERAL TAX THROUGH PAYROLL DEDUCTION**

(Part 1 only of a 4-part form)

NOTICE TO EMPLOYER

The employee whose signature appears hereon has authorized payroll deductions as set forth in detail below. Your cooperation in fulfilling this request will be most helpful. All remittances should be made payable to the INTERNAL REVENUE SERVICE and mailed promptly to the address indicated below. Please acknowledge receipt of the authorization by signing and returning the attached form. For your convenience, a record of the deductions may be kept on the reverse hereof.

SERVICE SERIAL NO. _____ GRADE OR RANK _____
SOCIAL SECURITY NO. _____ BADGE NO. _____

NAME AND ADDRESS OF EMPLOYEE (Military address if member of Armed Forces)

ITEMIZATION OF ACCOUNTS COVERED BY THIS AGREEMENT

REFERENCE NUMBER	PERIOD AND CLASS	ASSESSED BALANCE	STATUTORY ADDITIONS	TOTAL
		\$		\$
For the purpose of paying the unpaid taxes itemized above, including statutory additions, in the total amount shown at the right hereof, I hereby agree to and authorize the deduction from each salary payment due me, beginning with the first pay day after receipt of this agreement and continuing until the total indebtedness has been paid, the amount stated here				
SIGNATURE OF EMPLOYEE			TOTAL AMOUNT UNPAID AS ITEMIZED ABOVE	\$
DATE			AMOUNT OF PAYROLL DEDUCTION AUTHORIZED	\$
MAILING ADDRESS				

AGREEMENT SECURED BY: (Name and Title)

U.S. TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
AGREEMENT FOR LIQUIDATION OF FEDERAL TAX THROUGH PAYROLL DEDUCTION
FORM 2159 (REV. 4-62)
PART 1

TO

EXHIBIT 5
November 5, 1969

AO 202-735-A

Sample Memorandum to Employee on Private Debt Complaint

(Date)

MEMORANDUM FOR _____
(Employee)

From: _____
Personnel Officer

Subject: Debt Complaint

We have received a letter from _____
concerning an alleged indebtedness on your part of \$_____.

The Department requires its employees to pay each just debt in a proper and timely manner and to maintain a good reputation in the community.

It is requested that you inform this office not later than _____, in writing, (1) whether this is a just debt, and (2) what specific action you are taking to clear up this matter.

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EXHIBIT 6
November 5, 1969

Sample Reply to Private Debt Complaint

U. S. DEPARTMENT OF COMMERCE
(Operating Unit)
Washington, D. C. 20230

(Date)

(Address)

Gentlemen:

This is in response to your letter of _____,
concerning an alleged indebtedness of Mr. _____.

Your letter has been brought to Mr. _____'s
attention, and he has been requested to contact you directly
and make whatever settlement may be appropriate.

While the Department of Commerce expects its employees to pay
their just debts in a proper and timely manner, and Mr. _____
has been so informed, I am sure you can appreciate
the fact that the Department cannot act as a collection agency,
and it is necessary for creditors to make arrangements concern-
ing payments on indebtedness directly with the employee
concerned.

Sincerely,

(Signature)
Personnel Officer

EXHIBIT 7
November 5, 1969

AO 202-735-A

Sample Letter of Inquiry to Debt Complainant

U. S. DEPARTMENT OF COMMERCE
(Operating Unit)
Washington, D. C. 20230

(Date)

(Address)

Dear _____:

This will acknowledge your letter, dated _____, regarding the indebtedness of _____.

The Department considers that the prime responsibility for collection of personal debts lies with the creditor, since he has the privilege of making thorough investigations before extending credit. However, when reasonable precautions have been taken in advance to establish the reliability of an individual, when the obligation is an acknowledged one, and when adequate efforts have been made to obtain payment, assistance will be given by the Department to the extent of discussing the situation with the employee and encouraging him to make prompt arrangements to meet the obligation.

Your letter does not furnish sufficient information to provide basis for a satisfactory interview with the employee. If you will furnish the following data, the employee will be interviewed:

1. The method used in establishing the employee's credit
2. The date and amount of original debt
3. Terms of the contract
4. The date and amount of each payment
5. The current balance owed
6. Specific legal or other action taken to collect.

The Department expects its employees to pay their just debts in a proper and timely manner. I am sure you will understand, however, that the Department cannot serve as a collection agent or as an arbitrator when the validity or amount of the debt is questioned.

Sincerely,

(Signature)
Personnel Officer

FORM SEC-288 (11-69)

REPRINT INCLUDE AMENDMENT 1

TRANSMITTAL 57

United States of America DEPARTMENT OF COMMERCE		DEPARTMENT ADMINISTRATIVE ORDER 202-735A	
DEPARTMENT ADMINISTRATIVE ORDER SERIES		DATE OF ISSUANCE	Amendment 1 EFFECTIVE DATE
		October 6, 1970	October 6, 1970
SUBJECT EMPLOYEE RESPONSIBILITIES AND CONDUCT			

Department Administrative Order 202-735A, dated November 5, 1969, is hereby amended as follows:

1. Section 2 is amended in its entirety, to change policy with regard to outside employment, including the private practice of law, by inserting revised pages as indicated below.
2. Manual-holder should delete, by pen and ink, subparagraph 2.04c., which appears at the top of page 3.
3. Manual-holder should change, by pen and ink, "Part 300" in line 3 of subparagraph 3.02b. (page 3) to read "Part 100."

(b)(6)

Assistant Secretary for Administration

<u>Pages Changed</u>			
<u>Remove Pages</u>	<u>Dated</u>	<u>Insert Pages</u>	<u>Dated</u>
1 and 2	(undated)	1, 2 and 2a	10/6/70

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